

AMENDED IN ASSEMBLY AUGUST 22, 2012

SENATE BILL

No. 901

Introduced by Senator Steinberg
(Principal coauthor: Senator Padilla)
(Principal coauthor: Assembly Member Fuentes)

February 18, 2011

An act to ~~amend Section 44125 of, and to amend the heading of Article 11 (commencing with Section 44125) of Chapter 5 of Part 5 of Division 26 of, the Health and Safety Code, relating to air pollution~~ *add and repeal Article 1.5 (commencing with Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, relating to taxation.*

LEGISLATIVE COUNSEL'S DIGEST

SB 901, as amended, Steinberg. ~~Air pollution: vehicle retirement program.~~ *Taxation: undocumented immigrants.*

Existing law creates within state government the Department of Justice. Existing law provides that the department is under the direction and control of the Attorney General. Existing law requires the Franchise Tax Board to, among other things, administer personal and corporation income tax laws and certain other nontax programs, including the collection of specified delinquent debt.

This bill would establish a program until January 1, 2020, that would require the Department of Justice, until January 1, 2018, to report to the Franchise Tax Board information on a qualified person, defined as, among others, a person who is not eligible to receive a social security number, but who has filed a state income tax return with a valid individual taxpayer identification number. The bill would require the Franchise Tax Board to submit an annual report to the Legislature,

until January 1, 2019, that details the tax receipts collected from qualified persons who participate in the program. The bill would provide that information collected under the program is confidential and not subject to public disclosure under the California Public Records Act, except for purposes authorized under the act. The bill would require the destruction of all records collected under the act, as specified.

The California Constitution provides that the powers of state government are legislative, executive, and judicial. Existing law requires that the Governor see that the law is faithfully executed. Existing law provides that the Governor is the sole official organ of communication between the state and the government of any other state or of the United States. Existing federal law regulates immigration.

This bill would require the Governor to request that the President of the United States direct the Department of Homeland Security, the United States Immigration and Customs Enforcement (ICE), and other relevant federal agencies to not expend resources during the term of the program to apprehend, detain, or remove any qualified person participating in the program, or to prosecute any individual employing a qualified person.

~~Existing law creates the High Polluter Repair or Removal Account in the Vehicle Inspection and Repair Fund, and makes moneys deposited in the account available, upon appropriation by the Legislature, to the Department of Consumer Affairs and the State Air Resources Board to establish and implement a program for the repair or replacement of high polluters. Existing law also creates a program for the voluntary retirement of motor vehicles that are high polluting vehicles, administered by the Bureau of Automotive Repair pursuant to guidelines adopted by the state board, to be funded from the Enhanced Fleet Modernization Subaccount in the High Polluter Removal and Repair Account.~~

~~This bill would make this program available only to the highest polluting vehicles, with priority given to those highest polluting vehicles registered in air basins that are out of attainment with federal air quality standards. The bill would make other technical changes.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 *SECTION 1. This act shall be known and may be cited as the*
2 *California Opportunity and Prosperity Act.*

3 *SEC. 2. Article 1.5 (commencing with Section 19535) is added*
4 *to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation*
5 *Code, to read:*

6
7 *Article 1.5. Undocumented Immigrants: State Income Taxes*

8
9 *19535. As used in this article:*

10 *(a) "Qualified person" means a natural person who meets all*
11 *of the following criteria:*

12 *(1) Is not eligible to receive a social security number.*

13 *(2) Filed a state income tax return with a valid individual*
14 *taxpayer identification number for the most recent taxable year*
15 *that a return was required to be made with respect to taxes imposed*
16 *under Part 10 (commencing with Section 17001).*

17 *(3) Is not employed by a public entity, including, but not limited*
18 *to, the federal government, the State of California, any*
19 *administrative subunit of the state, or any political subdivision of*
20 *the state, including any city, city and county, county, district, or*
21 *other local governmental agency or public agency authorized by*
22 *law.*

23 *(4) Declares that he or she is able to speak and understand the*
24 *English language or is enrolled in, or has applied to enroll in, an*
25 *English-as-a-second-language class.*

26 *(5) Has not been convicted of a felony under the laws of the*
27 *United States, the State of California, or any other state.*

28 *(6) Is not a member or suspected member of a terrorist*
29 *organization and has not engaged and is not expected to engage*
30 *in terrorist activities as those terms are defined in Section*
31 *1182(a)(3)(B) of Title 8 of the United States Code.*

32 *(7) Is not a public charge within the meaning of Section*
33 *1182(a)(4) of Title 8 of the United States Code.*

34 *(8) Declares that he or she has been a resident of California*
35 *continuously since at least January 1, 2008.*

36 *(9) Consents to a background check and the disclosure of any*
37 *information necessary to confirm eligibility for the program.*

1 (10) Consents to the disclosure of his or her name and federal
2 individual taxpayer identification number to the Franchise Tax
3 Board in accordance with Section 19539.

4 (b) The language requirement in paragraph (4) of subdivision
5 (a) shall not apply to any person who meets any of the following
6 criteria:

7 (1) Is unable because of physical or developmental disability
8 or mental impairment to speak and understand English.

9 (2) Is over 50 years of age and has been living in the United
10 States for at least 20 years.

11 (3) Is over 55 years of age and has been living in the United
12 States for at least 15 years.

13 (c) “Program” means the program created by this article.

14 19536. There is hereby established a voluntary program to be
15 administered by the Department of Justice until January 1, 2018.
16 A qualified person may participate in the program under the
17 requirements set forth in this article.

18 19537. (a) A written application for admission to the program
19 by a qualified person shall be made in the form prescribed by the
20 Department of Justice. The application shall require that an
21 applicant provide a photograph or other electronically
22 transmissible image of the applicant.

23 (b) (1) Upon receipt of an application for admission to the
24 program and the fee provided for in Section 19538, the Department
25 of Justice shall cause an investigation to be made to determine
26 whether the applicant meets the definition of a qualified person.

27 (2) If the Department of Justice determines that an applicant
28 meets the definition of a qualified person, the Department of Justice
29 shall admit the applicant into the program and shall provide the
30 applicant with a confirmation of admission, which shall be valid
31 for one year from the date of issue.

32 (3) The Department of Justice shall renew a person’s admission
33 into the program on an annual basis upon payment of the renewal
34 application fee provided for in Section 19538 and a demonstration
35 that the person continues to meet the definition of a qualified
36 person.

37 19538. The Department of Justice shall charge each applicant
38 for the program a fee or annual renewal fee in an amount that
39 allows the agency to recover all reasonable costs incurred by it

1 *in administering the program, including startup costs and costs*
2 *associated with confirming eligibility for the program.*

3 *19539. On or before December 31, 2013, and on or before*
4 *December 31 of each successive year, until January 1, 2018, the*
5 *Department of Justice shall provide the Franchise Tax Board with*
6 *the name and federal individual taxpayer identification number*
7 *of each qualified person who was admitted into the program during*
8 *that calendar year. The Franchise Tax Board shall use the*
9 *information solely to prepare the report required by Section*
10 *19539.5 and shall not disclose the information for any purpose,*
11 *unless expressly provided for in this article.*

12 *19539.5. On or before December 31, 2014, and on or before*
13 *December 31 of each successive year, until January 1, 2019, the*
14 *Franchise Tax Board shall submit a report to the Legislature that*
15 *details the tax receipts collected during the immediately preceding*
16 *taxable year from qualified persons who participated in the*
17 *program. The report submitted by the Franchise Tax Board*
18 *pursuant to this section shall not contain any information that*
19 *identifies any specific qualified person who participated in the*
20 *program.*

21 *19540. (a) Any information disclosed by an applicant for, or*
22 *qualified person in, the program shall be used solely to administer*
23 *the program and shall not be used for any other purpose, unless*
24 *expressly provided for in this article.*

25 *(b) Any record containing any identifying information of an*
26 *applicant for, or qualified person in, the program shall not be*
27 *disclosed for any purpose, except as provided for in this article,*
28 *to the extent that the information is necessary to enforce a liability*
29 *that arises out of the Revenue and Taxation Code or the Family*
30 *Code, or as otherwise required by state or federal law. If*
31 *identifying information of an applicant for, or qualified person in,*
32 *the program is disclosed for a purpose authorized by this*
33 *subdivision, the recipient shall use the information solely for that*
34 *purpose and shall not disseminate the information any further.*

35 *(c) All identifying information of an applicant for, or qualified*
36 *person in, the program shall be confidential and exempt from*
37 *disclosure under the California Public Records Act (Chapter 3.5*
38 *(commencing with Section 6250) of Division 7 of Title 1 of the*
39 *Government Code).*

1 19540.5. *Unless expressly authorized or required by federal*
2 *law, this article shall not grant a qualified person any right or*
3 *privilege in any other state and shall not be used for any purpose*
4 *in any other state.*

5 19540.6. *The Department of Justice and the Franchise Tax*
6 *Board may adopt regulations in accordance with Chapter 3.5*
7 *(commencing with Section 11340) of Part 1 of Division 3 of Title*
8 *2 of the Government Code as necessary to implement this article.*

9 19540.7. *On January 1, 2019, or as soon as practicable*
10 *thereafter, all records relating to the program that contain any*
11 *identifying information of applicants for, or qualified persons who*
12 *participated in, the program shall be destroyed including, without*
13 *limitation, any applications for the program and records provided*
14 *to the Franchise Tax Board pursuant to Section 19540. This section*
15 *shall not obligate the Franchise Tax Board to destroy any tax*
16 *returns or other records that are necessary to conduct an audit or*
17 *appeal pursuant to the Revenue and Taxation Code or to process*
18 *any taxpayer claim for refund.*

19 19540.8. *This article shall remain in effect only until January*
20 *1, 2020, and as of that date is repealed.*

21 SEC. 3. (a) *On or after July 1, 2013, the Governor is*
22 *authorized and directed to submit, as a ministerial act on behalf*
23 *of the state, a request to the President of the United States asking*
24 *that the President direct the Department of Homeland Security,*
25 *the United States Immigration and Customs Enforcement (ICE),*
26 *and other relevant federal agencies not to expend resources during*
27 *the term of the program established by Article 1.5 (commencing*
28 *with Section 19535) of Chapter 7 of Part 10.2 of Division 2 of the*
29 *Revenue and Taxation Code of either of the following:*

30 (1) *The apprehension, detention, or removal of a qualified*
31 *person in the program or the qualified person's spouse or eligible*
32 *dependent, unless the qualified person, spouse, or eligible*
33 *dependent meets one of the priority enforcement criteria set forth*
34 *in the then-existing ICE policy on civil immigration enforcement.*

35 (2) *The prosecution of a person for employing a qualified person*
36 *pursuant to Section 1324a of Title 8 of the United States Code.*

37 (b) *On or after July 1, 2013, the Governor is further authorized*
38 *and directed, as a ministerial act on behalf of the state, to request*
39 *that the President provide any available waivers, exemptions, or*
40 *authorizations necessary to provide a safe harbor for individuals*

1 *and businesses from federal civil and criminal liability arising out*
2 *of a qualified person's participation in the program or the*
3 *employment of a qualified person during the term of the program.*

4 *SEC. 4. Section 19540 of the Revenue and Taxation Code, as*
5 *added by this act, imposes a limitation on the public's right of*
6 *access to the meetings of public bodies or the writings of public*
7 *officials and agencies within the meaning of Section 3 of Article*
8 *I of the California Constitution. Pursuant to that constitutional*
9 *provision, the people of California make the following finding to*
10 *demonstrate the interest protected by this limitation and the need*
11 *to protect that interest:*

12 *In order to protect the confidentiality and safety of a person who*
13 *participates in the program created by this act, it is necessary for*
14 *any identifying information that relates to that person to be exempt*
15 *from disclosure.*

16 *SEC. 5. The provisions of this measure are severable. If any*
17 *provision of this measure or its application is held invalid, that*
18 *invalidity shall not affect other provisions or applications that can*
19 *be given effect without the invalid provision or application.*

20 ~~SECTION 1. The heading of Article 11 (commencing with~~
21 ~~Section 44125) of Chapter 5 of Part 5 of Division 26 of the Health~~
22 ~~and Safety Code is amended to read:~~

23
24 ~~Article 11. Vehicle Retirement Program~~
25

26 ~~SEC. 2. Section 44125 of the Health and Safety Code is~~
27 ~~amended to read:~~

28 ~~44125. (a) No later than July 1, 2009, the state board, in~~
29 ~~consultation with the Bureau of Automotive Repair (BAR), shall~~
30 ~~adopt a program to commence on January 1, 2010, that provides~~
31 ~~for the voluntary retirement of passenger vehicles and light-duty~~
32 ~~and medium-duty trucks that are the highest polluters. The program~~
33 ~~shall be administered by the BAR pursuant to guidelines adopted~~
34 ~~by the state board.~~

35 ~~(b) The guidelines shall ensure all of the following:~~

36 ~~(1) Vehicles retired pursuant to the program are permanently~~
37 ~~removed from operation and retired at a dismantler under contract~~
38 ~~with the BAR.~~

39 ~~(2) Districts retain their authority to administer vehicle~~
40 ~~retirement programs otherwise authorized under law.~~

1 ~~(3) The program is available for the highest polluting passenger~~
2 ~~vehicles and light-duty and medium-duty trucks that have been~~
3 ~~continuously registered in California for at least two years prior~~
4 ~~to acceptance into the program or otherwise proven to have been~~
5 ~~driven primarily in California for at least the last two years and~~
6 ~~have not been registered in another state or country in at least the~~
7 ~~last two years.~~

8 ~~(4) Moneys appropriated for the purposes of the program are~~
9 ~~expended to retire the highest polluting vehicles in the state, with~~
10 ~~priority given to those highest polluting vehicles registered in air~~
11 ~~basins that are out of attainment with federal air quality standards.~~

12 ~~(5) Compensation for retired vehicles shall be one thousand five~~
13 ~~hundred dollars (\$1,500) for a low-income motor vehicle owner,~~
14 ~~as defined in Section 44062.1, and one thousand dollars (\$1,000)~~
15 ~~for all other motor vehicle owners. The department may pay a~~
16 ~~motor vehicle owner more than these amounts based on factors~~
17 ~~including, but not limited to, the age of the vehicle, the emission~~
18 ~~benefits of the vehicle's retirement, the emission impact of any~~
19 ~~replacement vehicle, and the location of the vehicle in an area of~~
20 ~~the state with the poorest air quality.~~

21 ~~(6) Cost-effectiveness.~~

22 ~~(7) Consideration of impacts on disadvantaged and low-income~~
23 ~~populations.~~